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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3720 OF 1999

Vishwanath Vasant poyekar .. Petitioner

V/s

1. R.D. Kadwadkar
2. Sadanand D. Mane
3. State of Maharashtra .. Respondents

Mr.A.G. Pandit for the petitioner.

Mrs.M.M. Deshmukh, A.P.P. for respondent no.3.

Mr.Sunil Gonsalves for respondent no.2.

WITH

CRIMINAL APPLICATION NO. 1410 OF 2000

Sadanand dnyandeo Mane .. Petitioner

V/s

1. R.D. Kadwadkar
2. Vishwanath Vasant Poyekar
3. State of Maharashtra .. Respondents

Mr.Sunil Gonsalves i/b Mr.A.P. Gupte for the petitioner.

Mr.A.G. Pandit for respondent no.2.

Mrs.M.M. Deshmukh, A.P.P. for respondent no.3.

CORAM : D.G. KARNIK, J.

DATE : 22ND NOVEMBER 2007

ORAL JUDGMENT:

1. Heard the learned counsel.

2. Both these revision petitions are directed against the same order, namely the order dated 25th November 1999 passed by the learned Metropolitan Magistrate's 33rd Court, Bellard Pier, Mumbai issuing process against the petitioners in Criminal Case No.1183/S of 1999. Hence, both the revisions are disposed of by this common order.

3. One Mr.R.D. Kadwadkar (hereinafter referred to as "the complainant"), who is respondent no.1 in both these revision petitions, filed a complaint against Mr.Vishwanath Poyekar (the applicant in Criminal Application No.3720 of 1999) and Mr. Sadanand Mane (the applicant in Criminal Application No.1410 of 2000) as a private complainant. The case of the complainant is that the complainant is a member of Vishal Konkan Co-operative Housing Society Ltd. (hereinafter referred to as "the Society") of which the petitioners are also the members. The complainant holds one flat bearing No.43 and proportionate interest in the capital and property of the Society. There were certain disputes between the members inter se and also with the builder. The complainant recites about certain illegalities allegedly committed by the petitioners and also recites about the disputes and refers to certain orders passed by the Co-operative Court in Mumbai. The said allegations, however, are not material for the purpose

of the matters at hand. The relevant allegations about the offence allegedly committed by the petitioners are contained in para 7 of the complaint. In para 7, it is alleged that the petitioners Mr.Poyekar and Mr.Mane entered into a criminal conspiracy to get dismissed Case No.50/IV of 1996 which was then pending in the IVth Co-operative Court at Mumbai. In furtherance of that conspiracy, the petitioner Mr.Poyekar gave a notice dated 3rd April 1996 to the petitioner Mr.Mane falsely designating him as the Chairman of the Society, though he very well knew that Mr.Mane was neither the Chairman of the Society nor had he any authority to represent the Society. Mr.Mane acknowledged the said notice as Chairman of the Society though he knew that he was neither the Chairman nor had the authority to represent the Society. The complainant further alleged that on 15th April 1996, Mr.Mane personally appeared before the Court and falsely impersonated himself as the Chairman of the Society knowing full well that he was not the Chairman of the Society nor had he any authority to represent the Society. His presence was recorded as Chairman of the Society in the roznama. Thereafter, Mr.Mane falsely stated before the Court that the said Society did not want to proceed with the dispute and withdrew from it. The petitioners Mr.Poyekar and Mr.Mane in collusion to each other misled the learned Judge into passing an order on 18th April 1996

dismissing the dispute.

4. Thus, in short, the allegations against Mr.Poyekar and Mr.Mane are that Mr.Mane falsely represented himself to be the Chairman of the said Society. In fact, he impersonated himself to be the Chairman of the said Society and Mr.Poyekar was acting in collusion with him. According to the complainant, therefore, both the petitioners had committed an offence of impersonation punishable under section 205 read with 120-B and 114 of I.P.C.

5. The private complaint, as aforesaid, was filed on 27th April 1999.

6. Learned counsel for the petitioners submitted that the averments made in the complaint are false and malicious. They further submitted that assuming all the averments made in the complaint were true, still the complaint was clearly barred by limitation and, therefore, the learned Magistrate was not entitled to take cognizance of the complaint. Perusal of the complaint shows that the offence is alleged to have been committed between 3rd April 1996 and 15th April 1996 and at the most upto 18th April 1996. The first act of collusion was issuance of a notice by Mr.Poyekar to Mr.Mane addressing him as the Chairman of the Society.

That was done on 3rd April 1996. The second act of impersonation as the Chairman of the Society was made by Mr.Mane on 15th April 1996 when he appeared before the Co-operative Court representing himself to be the Chairman of the Society. The last act was inducing the Co-operative Court to pass an order on 18th April 1996. Thus, the offence, if any, was complete on 18th April 1996. There is no averment anywhere in the complaint about the commission of any act by any of the petitioners after 18th April 1996 amounting to any offence. The present complaint has been filed on 27th April 1999, that is after a lapse of 3 years, 1 month and 9 days. The short question that arises for consideration is whether the complaint is within limitation.

7. Section 468 of the Cr.P.C., 1973 reads as under:-

> "68. Bar to taking cognizance after lapse of the period of limitation.- (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
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> (2) The period of limitation shall be-
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> (a) six months, if the offence is

punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

The period of limitation for taking cognizance of a complaint is 3 years if the offence is punishable for imprisonment for a term exceeding one year but not exceeding 3 years. The maximum punishment provided for an offence under section 205 of I.P.C. is 3 years. The punishment for an offence under section 120-B of I.P.C. is the same as if the conspirator had abetted the said offence. The punishment under section 114 of I.P.C. is

the same as if the abettor had committed the offence. Thus, the maximum punishment for any of the offence under section 205 read with 120-B and 114 of I.P.C. is 3 years. The period of limitation for taking cognizance of the complaint is therefore 3 years as laid down by section 468 of the Cr.P.C.

8. As stated earlier, the present complaint has been filed after the expiry of the period of 3 years. In the circumstances, the complaint was clearly barred by limitation and the learned Magistrate was not entitled to take cognizance of the complaint. Even if it is assumed that all the averments made in the complaint are true and correct, the learned Magistrate ought not to have taken cognizance of the complaint as it was barred by limitation and ought to have dismissed it.

9. For the reasons stated above, both the revision petitions are allowed. The order dated 25th November 1999 passed by the learned Metropolitan Magistrate, 33rd Court, Bellard Pier, Mumbai issuing process in Criminal Case No.1183/S/99 is quashed and set aside. Rule is made absolute accordingly.

(D.G. KARNIK, J.)